IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 607 of 2003

Date of decision 13.4.2007

Som Raj alias Soma **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.
The Hon'ble Mr. Justice : Sanjay Karol, Judge.

Whether approved for reporting?

For the appellant : Mr. Ajay Sharma, Advocate.

For the respondent : Mr. D.S. Nainta, Deputy Advocate General

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Surjit Singh, Judge (Oral)

Appellant Som Raj alias Soma is aggrieved by the judgment of the Sessions Court, whereby he has been convicted of offence under Section 302 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year.

Whether reporters of Local Papers may be allowed to see the Judgment?

2. Prosecution version may be summed up thus. On 29.7.2000 a '**Yagya'** (religious function) was organized by Krishan Singh (PW-2) at his house in village Sanihal, Tehsil Nurpur. The deceased Sardari Lal and his brother Nek Ram and several other persons were invited to partake in the feast, which followed the **'Yagya'**. Appellant and his brother Hari Singh were also among the invitees. Around 9.30 p.m. some altercation took place between deceased Sardari Lal and the appellant. Two nephews of Sardari Lal, named Sohan Singh (PW-4) and shamsher Singh (PW-8), on noticing the altercation, went to call Nek Ram (PW-1), who was busy in the kitchen. Nek Ram immediately came to the court-yard where the altercation was going on. He saw the appellant giving a blow of 'Darat' (scythe) on the occipital region (just above the neck) of the deceased Sardari Lal. When he aimed another blow of scythe, Nek Ram (PW-1) and some other persons standing there caught hold of the appellant and Mohinder singh (PW-6) snatched the scythe from the appellant and threw it towards a 'Choe' (Nallah). The deceased was immediately rushed to the Community Health Centre, Indora, which is at a distance of about seventeen Kilometers from the place of occurrence. The doctor informed the police on telephone that a man with injury on the occipital region, allegedly received in a fight, had been brought to the hospital. ASI Shiv Kanaya (PW-12) rushed to the Community Health Centre after the telephonic message was received at the Police Station. By the time she reached the health centre, Sardari Lal was dead. Nek Ram (PW-1), the brother of the deceased, who was present at the Community Health Centre, made a statement to ASI Shiv Kanaya, who reduced the same into writing and forwarded it to the Police Station for the formal registration of a case.

The police got the post mortem of the dead body conducted. The doctor noticed an incised wound 6 cm X 4 cm, which was brain deep. The doctor noticed that the bone underlying this external injury had been cut. Laceration of underlying brain tissue was also noticed. Margins of the cut bone were clean and regular. The injury was opined to be ante mortem. Time lag between the infliction of the wound and the post mortem examination was opined to be fifteen hours. The post mortem was conducted on 30.7.2000 at 2.00 p.m. Time lag between the injury and the death was opined to be "instantaneous to within six hours". Spot map was prepared. Marks of blood were noticed in the Verandah of Krishan Singh. Some blood stains were also noticed on the path adjacent to the court-yard of Krishan Singh (PW-2).

3. On the completion of the investigation, report under Section 173 of the Code of Criminal Procedure, along-with relevant documents, was submitted to the concerned Judicial Magistrate, who committed the case to the Sessions Court. The appellant was charged with the offence of murder, under Section 302 of the Indian penal Code by the Sessions Court. On his pleading not guilty, he was put on trial.

4. Prosecution examined Nek Ram (PW-1), brother of the deceased, Krishan Singh (PW-2) at whose house the feast followed by **'Yagya'** was going on, Sohan Singh (PW-3) one of the nephews of the deceased, who went to call Nek Ram (PW-1) on noticing the deceased and the appellant quarrelling, Mohinder Singh (PW-6), who allegedly snatched the 'Darat' from the appellant and threw it towards the 'Choe', Shamsher Singh (PW-8) another nephew of the deceased, who also claims to have seen the appellant inflicting the injury on the occipital region of the

deceased, ASI Shiv Kanaya (PW-12), SI Tarunjit Singh (PW-13), who investigated the case, Dr. Suman Saxena (PW-4), who conducted the post mortem examination and Dr. B.M. Gupta (PW-5), who provided first aid to the deceased when he (the deceased) was taken to the Community Health Centre, Indora.

5. Appellant took the plea of alibi. He claimed that he was at Chintpurni on the relevant day. He stated that his brother Hari Singh, whom he examined as DW-5, had attended the function at Krishan Singh's house and there he happened to have a quarrel followed by a scuffle with the deceased and that in the meantime one Gorkha Rana, who had been very friendly with the deceased, reached there and on seeing that Sardari Lal, deceased was scuffling with Hari Singh, he picked up a 'Darat' and aimed a blow at Hari Singh, but the latter turned to one side and escaped and the blow landed on the occipital region of the deceased.

6. The trial Court accepted the ocular version given by Nek Ram (PW-1), Krishan Singh (PW-2), Sohan Singh (PW-3), Mohinder Singh (PW-6) and Shamsher Singh (PW-8) and rejected the defence plea. Consequently it convicted and sentenced the appellant, as aforesaid.

7. Appellant's counsel has made two-fold submission. First he has urged that the evidence on record does not prove the prosecution version, because the alleged eye witnesses are partisan and interested and also their depositions are full of contradictions and discrepancies rendering their version highly doubtful. His second submission is that even if the ocular version is believed, this is not a case of murder punishable under Section 302 of the Indian penal Code, but a case of culpable homicide not

amounting to murder punishable under Section 304 second part of the Indian Penal Code.

8. Elaborating his first submission, the learned counsel for the appellant urged;

(a) evidence on record shows that PW-1 Nek Ram was not even present on the spot, what to speak of his having witnessed the occurrence;

(b) there was no motive for the alleged crime;

(c) evidence as to the anature of weapon of offence is doubtful as some witnesses say it was a 'Darati' and the others say it was a 'Darat';

(d) evidence of recovery of weapon of offence also does not inspire confidence;

(e) incident allegedly took place in the court-yard, but the blood was found in the Verandah as also on the path in front of the house of Krishan Singh;

(f) evidence of PW-6 Mohinder Singh, who allegedly snatched the 'Darat' from the appellant, is self-contradictory;

(g) evidence on record proves the defence version.

9. In support of submission (a) above, the learned counsel for the appellant drew the attention of the Court to the testimony of PW-5 Dr. B.M. Gupta, who attended the deceased and provided him first aid when he was taken to the Community Health Centre, Indora. This witness stated in the cross-examination that the deceased had been brought to the hospital by his brother-in-law Baldev Singh and one Ranjit Singh. The learned counsel argued that though PW-1 Nek Ram claims to have taken the deceased to the hospital, his statement to this effect is falsified by the testimony of PW-5 Dr. B.M. Gupta. Dr. B.M. Gupta named the above said

two persons, who carried the deceased to the Community Health Centre, on the basis of a mention to this effect in the medicolegal certificate Ext. PW-5/B.

10. Of course in Ext. PW-5/B only two persons are named, but it is also not mentioned in the said certificate that the deceased was accompanied by only two persons named therein and no others. PW-1 Nek Ram very categorically stated that after Sardari Lal fell on the ground due to the wound inflicted on his occipital region, he and other persons carried him to the hospital at Indora. His testimony is supported by the testimony of PW-12 ASI Shiv Kanaya, who has stated that on reaching the Community Health Centre, Indora, she recorded the statement of Nek Ram PW-1 at 11.20 p.m. and forwarded the same to the Police Station for the registration of the case. The testimony of PW-1 Nek Ram that he and other persons carried the deceased to the hospital at Indora and the testimony of PW-12 ASI Shiv Kanaya that she recorded the statement of Nek Ram at Indora Hospital at 11.20 p.m., on the very day of occurrence, have not been challenged. In view of the aforesaid categorical statements of PW-1 Nek Ram and PW-12 Shiv Kanaya on this point, the contention that Nek Ram was not there on the spot, cannot be accepted.

11. As regards submission (b) it is true that there is no evidence of motive for the commission of the crime, but this fact is of little significance, particularly when there is over-whelming direct evidence in the form of the testimony of PW-1 Nek Ram, PW-2 Krishan Singh, PW-3 Sohan Singh, PW-6 Mohinder Singh and PW-8 Shamsher Singh that it was the appellant who gave the fatal blow on the back side of the head just above the neck of Sardari Lal. PW-1 stated that he was busy in the kitchen when

his nephews Sohan Singh and Shamsher Singh came and informed him that the appellant was quarrelling and scuffling with deceased Sardari Lal and that immediately thereafter he rushed out and saw that the appellant gave a b low of 'Darat' on the head of Sardari Lal. PW-2 Krishan Singh, at whose house the incident took place, testified that when the invitees were being served and enjoying meals, appellant Som Raj alias Soma picked up a 'Darat' from his house and dealt a blow on the head of Sardari Lal and that when he tried to deal another blow, Mohinder Singh snatched the 'Darat' from him and threw it downward. PW-3 Sohan Singh stated that the appellant gave a blow of Darat on the head of Sardari Lal and he and Shamsher Singh informed Nek Ram (PW-1), who came to the spot and that when the appellant attempted another blow on the head of Sardari Lal, Mohinder Singh snatched the Darat from him and threw it downward. PW-8 Shamsher Singh stated that the appellant gave a blow of 'Darat' on the head of Sardari Lal and that when he was about to give one more blow, he was over-powered by Nek Ram (PW-1) and Krishan Singh (PW-2) and Mohinder Singh then snatched the Darat from his hand and threw it downward. Mohinder Singh PW-6 also stated that he snatched the Darat from the hand of the appellant, when Krishan Singh and Nek Ram had caught hold of him (the appellant).

12. There is no major contradiction in the testimony of these witnesses. Of course deposition of PW-3 Sohan Singh gives the impression that PW-1 Nek Ram was called when the blow of 'Darat' had already been dealt on the head of Sardari Lal, but an over all reading of his statement shows that Nek Ram was already there on the spot as according to him, he was serving meals to the invitees and he foiled appellant's

attempt to give another blow on the head of Sardari Lal, with the help of other persons, while Mohinder Singh (PW-6) snatched the 'Darat' from the appellant.

13. Now when there are eye witnesses and they are corroborated by each other in all material particulars and the statements of some of them, particularly PW-6 Mohinder Singh, regarding the presence of the appellant on the spot, are not challenged in the cross-examination, the absence of motive for the commission of the crime becomes absolutely insignificant.

14. Dwelling on submission (c), learned counsel for the appellant, by referring to the statements of the prosecution witnesses, pointed out that some witnesses testified that the weapon was a 'Darat' and some others testified that it was a 'Darati'. Of course 'Darat' and 'Darati' are two different implements used by the agriculturists. 'Darat' is larger in size while 'Darati' is smaller. However, both the implements are similarly shaped and difference in size is also not much. The incident had taken place during night time when sun-light was not available and in the electric light the witnesses might not have been able to see the weapon as clearly as it could have been seen during day light. In any case, variation in the testimony of the witnesses about the kind of the weapon becomes irrelevant when there is overwhelming direct evidence, which inspires confidence and is further strengthened by the proven falsity of the defence plea, which is being dealt with hereafter.

15. With regard to submission (d) it was urged that as per prosecution evidence the weapon of offence, i.e. Darat Ext. P-1, was produced by Krishan Singh (PW-2) from his house though according to

prosecution's own version and evidence of the eye witnesses, 'Darat' had been snatched from the appellant by Mohinder Singh (PW-6) and thrown downward into a 'Choe'. It has come in the evidence that the weapon of offence, i.e. Darat, had been picked up from the house of Krishan Singh (PW-2) by the appellant. That means the Darat belonged to this witness. If it is so, in all probabilities Krishan Singh (PW-2) being the owner of the 'Darat', was supposed to have retrieved it from the 'Choe'. And when the police demanded it, he produced the same to them.

16. Coming to submission (e), it is true that the incident has been testified by all the witnesses to have taken place in the court yard of PW-2 Krishan Singh. It is also true that no blood marks were there in the court yard when the police visited the spot a few hours later, i.e. at 1.30 a.m. but the mere absence of the blood stains or marks in the court yard cannot be a ground for disbelieving the version of the eye witnesses. There are good reasons for the absence of blood stains or marks in the court yard. Firstly it has come in the evidence that it had been raining that night. May be that blood stains were washed away. Further the site plan Ext. PW-13/A, duly proved by PW-13 S.I. Tarunjit Singh, shows that the incident had taken place just on the edge of the Verandah. Now, when a 'Darat' blow had been given on the head of the deceased just outside the Verandah in the presence of so many persons, there is every likelihood that the deceased fell in the Verandah, when the blow was given. Also, it is quite likely that when the blow was given in the presence of so many persons just on the edge of the Verandah, the deceased was immediately carried to the Verandah by those who were present on the spot. That is why the marks of blood were spotted in the Verandah and not in the court yard.

17. It was argued that if the rain was the reason for the disappearance of the blood stains from the court yard, how could such stains have been found on the path adjoining the house of PW-2 Krishan Singh. May be that the portion of the path where the blood stains were found is covered by some projection of the adjoining house or even by some shady tree. It was also urged that when the incident is alleged to have taken place in the court yard, how the blood stains were found on the adjoining path. It is likely that when the deceased was being taken to the hospital some blood from his bleeding wound fell on the path.

18. While dealing with submission (f), it was then urged by the learned counsel that the statement of PW-6 Mohinder Singh with regard to the allegation of snatching of Darat from the appellant was self-contradictory, because in the cross-examination he denied the suggestion that the 'Darat' was snatched from the appellant by him, PW-1 Nek Ram and PW-2 Krishan Singh. As a matter of fact the witness stated in the examination-in-chief that it was he alone who had snatched the Darat from the appellant. Other witnesses also stated that the 'Darat' was snatched by PW-6 Mohinder Singh from the appellant, when the appellant was over-powered by Nek Ram (PW-1) and Krishan Singh (PW-2). Thus there is no contradiction in the testimony of PW-6 Mohinder Singh.

19. So far as submission (g) is concerned, appellant's own evidence proves that the defence version as suggested to PW-1 Nek Ram and stated by appellant in reply to question No. 20 in his statement, under Section 313 of the Code of Criminal Procedure, is false. The defence version as suggested to PW-1 and stated by appellant in his statement, under Section 313 of the Code of Criminal Procedure is that on the fateful

evening Hari Singh (DW-5), the elder brother of the appellant, and deceased Sardari Lal exchanged hot words and thereafter started scuffling and in the meanwhile one Rana Gorkha, who was a friend of deceased Sardari Lal, reached there and deceased Sardari Lal asked said Gorkha Rana to give beating to DW-5 Hari Singh upon which Gorkha Rana attempted Darat blow at Hari Singh, but the latter managed to escape the blow and it landed on the upper side of the neck of deceased Sardari Lal. But what DW-5 Hari Singh himself has stated is different. He has stated that around 8-20 or 9.00 p.m. on the relevant day Gorkha Rana met him outside the house of Krishan Singh and started quarrelling and scuffling with him and in the meanwhile deceased Sardari Lal also reached there and he caught hold of him and Gorkha Rana then gave him fist blows on the mouth resulting in breaking of his tooth and then he attempted a 'Darat' blow on him, which he escaped, but it landed on the head of Sardari Lal. The testimony of this witness is in total contradiction with the defence version. More-over, there is unchallenged testimony of PW-6 Mohinder Singh that he had snatched the 'Darat' from the appellant and thrown it downward into the 'Choe' (Nallah), when the appellant had been over-powered by Nek Ram (PW-1) and Krishan Singh (PW-2). No suggestion was thrown to this witness that the appellant was not there on the spot. This unchallenged testimony of PW-6 falsifies the appellant's plea that he was not on the spot but at Chintpurni on the relevant night.

20. From the above discussion it is crystal clear that the fatal blow on the occipital region of the deceased was given by the appellant with a 'Darat'.

21. Touching the second submission, viz. the case is covered not under Section 302 but Section 304 second part of the Indian Penal Code, the learned counsel for the appellant stated that only one blow had been given and that this fact suggests that the appellant did not have the intention to kill the deceased or even to cause an injury sufficient in the ordinary course of nature to cause death. In support of his contention, he placed reliance upon the following judicial precedents:-

(i) **Abani K. Debnath and another vs. State of Tripura,** [(2005) 13 SCC 422] ;

(ii) **State of Himachal Pradesh vs. Ram Pal,** (AIR 2005 SC 4058);

(iii) **Munshi Singh Gautam and others vs. State of M.P.,** (AIR 2005 SC 402);

(iv) **Dattu Shamrao Valake and another vs. State of Maharashtra,** (AIR 2005 SC 2331); and

(v) **Ramchandra Ohdar vs. State of Bihar,** (1999 Cri.L.J. 1449).

22. We have gone through these precedents. None of them is applicable to the facts of the present case.

23. In Abani K. Debnath's case (supra) a single 'Dao' blow had been dealt on the occipital region of the deceased, which resulted in 3" x ½" bone deep injury. The victim died five days after the receipt of the injury. Head injury itself was not the cause of the death but there was one more injury which had not been attributed to the appellant but to another co-accused. Section 34 was held to be not attracted as there was no evidence of premeditation. Because the 'Dao' blow alone was not opined to be the cause of death, it was for this reason that the conviction of the appellant

was changed from Section 302 to Section 304 part second of the Indian penal Code.

24. In State of Himachal Pradesh vs. Ram Pal (supra) the facts were totally different. The case was covered by Exception 4 to Section 300 of the Indian penal Code and it was because of this that conviction was altered from Section 302 to Section 304 part first of the Indian Penal Code.

25. In Munshi Singh Gautam's case (supra) the deceased had been subjected to beating by the police people when he was in their custody. The deceased was having ailment of lungs. It was the combined effect of the beating and the ailment of lungs which proved fatal. Therefore, the conviction under Section 304 part second of the Indian penal Code was upheld.

26. Dattu Shamrao Valake's case (supra) was covered by Exception 4 to Section 300 of the Indian Penal Code and so the conviction under Section 302 was changed to one under Section 304 first part of the Indian Penal Code.

27. In Ramchandra Ohdar's case (supra) a blow of a sharp edged weapon was given on the neck. There were also some other injuries. The accused was not proved to have caused those other injuries nor was there any evidence indicating as to who had caused those injuries. The medical evidence was silent about the nature of the injury caused by the appellant by means of sharp edged weapon. It was under these circumstances that the case was held to be covered by Section 326 and not by Section 302 of the Indian Penal Code.

28. In the instant case injury has been caused on the occipital region of the deceased by means of a 'Darat' with such a force that the

blow after cutting through the skull bone hurt the brain resulting in death of the deceased within a couple of hours. A man who gives a blow by means of a heavy sharp edged weapon like 'Darat', which is also used in this part of the country by the butchers for beheading goats and sheep, can legitimately be presumed to intend the killing of the victim or at-least to cause such bodily injury as is sufficient in the ordinary course of nature to cause death. The intention of the appellant to kill the deceased can further be gathered from the fact that he attempted another blow of 'Darat' at the deceased, though it is different matter that his attempt was foiled by PW-1 Nek Ram and PW-2 Krishan Singh by overpowering him.

29. In view of the above discussion, the second / alternative submission made by the learned counsel for the appellant is also rejected.

30. As an upshot of the above discussion and findings, appeal is dismissed.

(Surjit Singh)
Judge

April 13, 2007 (BC)

(Sanjay Karol)
Judge